

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

JBM, INC., d/b/a BLUEGRASS SATELLITE
Employer

and

Case 25-RC-10327

LOCAL UNION NO. 135, CHAUFFEURS, TEAMSTERS,
WAREHOUSEMEN AND HELPERS, INDIANAPOLIS,
INDIANA, AND AIRLINE EMPLOYEES OF THE STATE
OF INDIANA a/w THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS
Petitioner

FOURTH SUPPLEMENTAL DECISION
ON OBJECTIONS AND ORDER

Pursuant to a Second Supplemental Decision and Direction of Runoff Election¹ issued by the Regional Director of Region Twenty-Five on September 27, 2006², a mail ballot run-off election commenced on October 27, 2006, among certain employees of the above-named Employer to determine whether or not they desired to be represented by the Petitioner for

¹ Pursuant to a supplemental decision issued by the Regional Director on June 15, 2006, and amended by the Board to allow working team leaders (“WTLs”) to vote subject to challenge, an initial mail ballot election was conducted commencing July 12, 2006, among certain employees of the Employer to determine whether or not they desired to be represented by the Petitioner or The Production Workers Union, Local 707 (NPW) for the purposes of collective bargaining.

² On September 27, 2006, the Production Workers Union, Local 707, NPW, (the Intervenor) filed a Request for Review of the Second Supplemental Decision and Direction of Runoff Election with the Board. The Board denied the Intervenor’s Request for Review on November 13, 2006.

purposes of collective bargaining³. The ballots for the run-off election were counted on November 15, 2006, and the Tally of Ballots was made available to the parties⁴

On November 22, 2006, the Petitioner timely filed objections to the run-off election. Following an investigation of the issues raised by the objections, the Regional Director on December 19, 2006, issued his Third Supplemental Decision, Order Directing Hearing, and Notice of Hearing. In his Third Supplemental Decision the Regional Director ordered that a hearing be conducted before a hearing officer to resolve the issues of fact and credibility raised by the Objections. Pursuant to that order, and a subsequent order rescheduling the hearing, a hearing was conducted on January 31, 2007, in Indianapolis, Indiana before Hearing Officer Kim Sorg-Graves. On February 15, 2007, Hearing Officer Sorg-Graves issued her Hearing Officer's Report on Objections and Recommendations to the Regional Director, recommending that Objections 1, 2, 4, 5, and 6 be overruled, Objection 3 be sustained, and a re-run election be held among the unit employees.

On March 1, 2007, the Employer filed exceptions to the Hearing Officer's recommendations with regard to her findings and conclusions concerning Objections 3 and 6. In addition the Petitioner, on March 1, 2007, filed cross-exceptions to the Hearing Officer's findings and conclusions related to Objection 6. No exceptions were filed to the Hearing Officer's findings and conclusions regarding Objections 1, 2, 4 and 5. I have carefully reviewed the record evidence which form the basis for the Hearing Officer's Report on Objections and Recommendations to the Regional Director, as well as the Employer's exceptions and Petitioner's cross-exceptions thereto. For the reasons contained therein, I affirm and adopt as my

³ The appropriate unit as set forth in the Second Supplemental Decision and Direction of Runoff Election is as follows:

All full-time and regular part-time technicians, trainers, and clerks employed by the Employer at all its Illinois, Indiana, Iowa, Kentucky, and Ohio facilities (excluding the Columbus, Ohio facility); BUT EXCLUDING all sales employees, professional employees, guards and supervisors, including head area technicians and working team leaders, as defined in the Act, and all other employees.

⁴ The tally of ballots for the runoff election showed the following results:

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| Approximate number of eligible voters | 685 |
| Number of void ballots | 3 |
| Number of votes cast for the Petitioner | 140 |
| Number of votes cast against participating labor organization | 170 |
| Number of valid votes counted | 310 |
| Number of challenged ballots | 18 |
| Number of valid votes counted plus challenged ballots | 328 |

own the Hearing Officer's findings⁵, conclusions⁶, and recommendations to the undersigned.

⁵ The Employer excepted to some of the Hearing Officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence indicates that they are incorrect. *Standard Dry Wall Products* 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). I find no basis to reverse the hearing officer's credibility findings. In addition, the Employer urges that an adverse inference be drawn from the Petitioner's failure to call any additional employee witnesses who were allegedly interrogated by Marshall. I decline to draw such an adverse inference as these employees are not witnesses who may reasonably be assured to be favorably disposed to the Petitioner such that the absence of their testimony would indicate that they would have testified adversely to the Petitioner. See *International Automated Machines*, 285 NLRB 1122, 1123. However, and in any event, I agree with the Hearing Officer that Objection 6 be overruled. The Petitioner failed to establish the requisite dissemination of the interrogations to constitute objectionable conduct in this large unit.

⁶ The Employer asserts that the Hearing Officer erred by distinguishing *TNT Logistics North America*, 345 NLRB No. 21 (August 6, 2006) and *Tri-Cast, Inc.*, 274 NLRB 377(1985) in concluding that the Employer's October 30 communication to employees constituted objectionable conduct. I agree that the Hearing Officer properly distinguished these cases. In *TNT Logistics*, the Board found that a supervisor's (Haynes') statement to one employee that the employer would lose the Home Depot account if the union were selected by employees was nothing more than the expression of a personal opinion by that supervisor of what the customer may do in the event the employer was organized. Further, the Board concluded that any threatening aspect of this prediction was dissipated by the statement of a higher employer official in a town hall meeting of employees the very next day. In that meeting, the employer's general manager indicated there was a "possibility" that Home Depot would not renew its contract with the employer if the union were selected the bargaining representative. Thus, the employer's statement in *TNT Logistics* was not explicitly linked to the loss of jobs or the cessation of business. Rather the statement, along with subsequent discussions with employees, left open the possibility of Home Depot remaining a customer and, if not, the possibility of the employees transferring to other employer accounts. In the instant case, the Employer repeatedly indicated that the probable result of the selection of the Petitioner as the employees' collective bargaining representative would be the loss of jobs and closure of the business. These predictions go far beyond the information from DirecTV relied upon by the Employer. Additionally, the facts of *Tri-Cast* involve a single reference to the possible loss of business and jobs if the employer had to bid higher or if customers felt threatened because of delivery cancellations. That situation is unlike the instant case. Here the Employer did not merely describe its contractual, economic or competitive position, rather it presented the worst-case scenario as a consistent theme that the selection of the Petitioner equaled the loss of jobs and the demise of the company. In view of the entire context of the October 20 letter that was disseminated to all employees within a week of the mail ballot election, I agree with the Hearing Officer that the Employer went beyond permissible campaign statements and threatened employees with job loss and the closing of the business if employees selected the Petitioner, thereby engaging in objectionable conduct.

ORDER

Accordingly, based upon the findings and conclusions set forth in the Hearing Officer's Report on Objections and Recommendations to the Regional Director, IT IS HEREBY ORDERED that:

1. Objections 1, 2, 4, 5 and 6 be overruled;
2. Objection 3 be sustained; and
3. The election be set aside and a re-run election be conducted.

RIGHT TO REQUEST REVIEW

Under the provisions of Sections 102.69 and 102.67 of the Board's Rules and Regulations, a request for review of this Fourth Supplemental Decision may be filed with the Board in Washington, D.C. The request for review must be received by the Board in Washington, D.C., addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by **June 18, 2007**. A copy of the request for review should be simultaneously served upon each party and upon the Regional Director.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

SIGNED at Indianapolis, Indiana, this 4th day of June, 2007.

/Rik Lineback/

Rik Lineback, Regional Director
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